

# Notice of Allowability

Application No.

09/913,980

Examiner

Shaojia A. Jiang

Applicant(s)

DIEING ET AL.

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to January 18, 2005.
2. ☒ The allowed claim(s) is/are 1-25 and 32 (now renumbered to 1-20, 22-26, and 21).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
S. Anna Jiang, Ph.D.  
Primary Examiner,  
Art Unit 1617  
April 1, 2005

### **DETAILED ACTION**

This Office Action is a response to Applicant's response (remarks) after FINAL and the terminal disclaimer filed on January 18, 2005.

Currently, claims 1-32 are pending in this application.

Note that this application is a 371 (a national stage entry) of PCT/EP00/01070, International Filing Date: 02/10/2000 which claims foreign priority to German 199 07 587.5 under 35 U.S.C. 119(a)-(d). The copy of certified copy of the priority has not been filed with the instant Application. It is noted that PCT/EP00/06997 and German 199 07 587.5 are in German; no translation of said Germany application into English has been provided.

***Examiner's Amendment***

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Mr. Daniel S. Kim on April 1, 2005.

The Claims have been amended as follows:

- Canceling claims 26-31 drawn to a nonelected invention.

The application has been amended as follows:

- Insert the following on page 1 of the instant specification, just below the title:

“This application is a 371 of PCT/EP00/01070 filed February 10, 2000 which claims foreign priority to Germany 199 07 587.5 under 35 U.S.C. 119(a)-(d), filed February 22, 1999.”

### ***Reasons For Allowance***

Claims 1-25 and 32 are examined on the merits herein.

The claimed method for improving hold or elasticity of a hairstyle, said method comprising applying to the hair polymers obtained by free-radical polymerization of, in particular, a) at least one vinyl ester of C1-C24-carboxylic acids in the presence of b) polyether-containing compounds and c) optionally one or more other copolymerizable monomers, and subsequent at least partial hydrolysis of the ester functions of the original monomers a), and the claimed hair cosmetic formulation made by this particular polymerization, are not seen to be taught or fairly suggested by the prior art, as discussed below.

First, Applicant's petition filed on January 18, 2005, which requests under 37 C.F.R. 51.182 that a previously filed terminal disclaimer of U.S. Patent No. **6,403,074** be withdrawn. The petition fee has been received. The petition is granted on February 7, 2005, because that the previously filed terminal disclaimer for 6,403,074 is not deemed to apply to any claim currently of record, because the claims 4-7 of U.S. Patent No. 6,403,074 does not read on the vinyl ester of C1-C24-carboxylic acids as instantly claimed. Since the definition for "vinyl ester of C1-C24-carboxylic acids" in the claims herein requires the vinyl group at the position of the "alcohol part" as Applicant asserts, 6,403,074 discloses the ethylenical carboxylic acid wherein the vinyl group is at the position of the "acid part". Therefore, this obviousness-type double patenting rejection over **6,403,074** is withdrawn.

Second, the terminal disclaimer for **6,579,953** filed on January 18, 2005, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. 6,579,953 has been reviewed and is accepted. The terminal disclaimer has been recorded. Therefore, the obviousness-type double patenting rejections of Claims 21-25 as being unpatentable over claims 1-6 of U.S. Patent No. 6,579,953 of record in the previous Office January 12, 2005 is withdrawn.

Third, Applicant's remarks submitted January 18, 2005 with respect to the rejection of Claims 1-25 and 32 made under 35 U.S.C. 102(a) as being anticipated by Blankenburg et al. (WO 99/04750, equivalent to US 6,403,074) of record in the previous Office Action dated January 12, 2005, have been considered and found persuasive to remove this rejection, since, as indicated above, the definition for "vinyl ester of C1-C24-carboxylic acids" in the claims herein requires the vinyl group at the position of the "alcohol part" as Applicant asserts (see Applicant's remarks, page 2-4), whereas Blankenburg et al. discloses the ethylenical carboxylic acid wherein the vinyl group is at the position of the "acid part". Thus, the polymers of Blankenburg et al. are not deemed to anticipate or render the instant polymers obtained by the particular polymerization herein obvious to one of ordinary skill in the art.

Therefore, the said rejection is withdrawn.

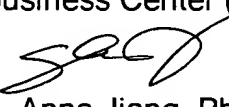
Accordingly, the application is deemed in condition for allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner S. A. Jiang whose telephone number is 571.272.0627. The examiner can normally be reached on 9 am -5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571.272.0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Anna Jiang, Ph.D.  
Primary Examiner,  
Art Unit 1617  
April 1, 2005